

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

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9	RORY VAUGHN KEETON,)	
10)	No. CV-09-3103-CI
11	Plaintiff,)	
12)	
13	v.)	REPORT AND RECOMMENDATION
14)	FOR ORDER GRANTING
15	MICHAEL J. ASTRUE,)	STIPULATED MOTION FOR REMAND
16	Commissioner of Social)	PURSUANT TO SENTENCE FOUR OF
17	Security,)	42 U.S.C. 405(g)
18)	
19	Defendant.)	
20)	

BEFORE THE COURT on report and recommendation is the parties' stipulated Motion for Remand of the above-captioned matter to the Commissioner for additional administrative proceedings. (Ct. Rec. 28.) Attorney Elie Halpern represents Plaintiff Rory Keeton; Special Assistant United States Attorney Thomas Elsberry represents Defendant. The parties have not consented to proceed before a magistrate judge. After considering the stipulation of the parties, **IT IS RECOMMENDED:**

The parties' stipulated Motion for Remand (Ct. Rec. 28) be **GRANTED**. The above-captioned case be **REVERSED** and **REMANDED** to the Commissioner of Social Security for further administrative proceedings pursuant to sentence four of 42 U.S.C. § 405(g).

IT IS FURTHER RECOMMENDED:

1. On remand, the administrative law judge (ALJ):
 - a. conduct a *de novo* hearing with respect to Plaintiff's applications for disability insurance benefits under Titles II and XVI of the Social Security Act;
 - b. consider and weigh the medical evidence, including the opinions of Dr. Irvine, Dr. MacMillan, Dr. Underwood, Ms. Karen McBirnie, Ms. Lisa Belding, and C.J. Burns, therapist;
 - c. give further consideration to Plaintiff's maximum residual functional capacity without giving evidentiary weight to the RFC assessment by single decision maker, Kristen Conroy, and if necessary;
 - d. obtain additional evidence from a vocational expert.
2. Judgment be entered for the **PLAINTIFF**.
3. An application for attorney fees may be filed by separate motion.

OBJECTIONS

Any party may object to a magistrate judge's proposed findings, recommendations or report within **fourteen (14)** days following service with a copy thereof. Such party shall file written objections with the Clerk of the Court and serve objections on all parties, specifically identifying the portions to which objection is being made, and the basis therefor. Any response to the objection shall be filed within **fourteen (14)** days after receipt of the objection. Attention is directed to FED. R. CIV. P. 6(d), which adds additional time after certain kinds of service.

1 A district judge will make a de novo determination of those
2 portions to which objection is made and may accept, reject, or
3 modify the magistrate judge's determination. The judge need not
4 conduct a new hearing or hear arguments and may consider the
5 magistrate judge's record and make an independent determination
6 thereon. The judge may, but is not required to, accept or consider
7 additional evidence, or may recommit the matter to the magistrate
8 judge with instructions. *United States v. Howell*, 231 F.3d 615, 621
9 (9th Cir. 2000); 28 U.S.C. § 636(b)(1)(B) and (C), FED. R. CIV. P.
10 72(b)(3); LMR 4, Local Rules for the Eastern District of Washington.

11 A magistrate judge's recommendation cannot be appealed to a
12 court of appeals; only the district judge's order or judgment can be
13 appealed.

14 The District Court Executive is directed to file this Report
15 and Recommendation and provide copies to counsel for Plaintiff and
16 Defendant and the referring district judge.

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18 DATED December 20, 2010.

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20 s/ CYNTHIA IMBROGNO

21 UNITED STATES MAGISTRATE JUDGE
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